REMARKS

Claims 1-18 are pending in the application. Claims 1-13, 16 and 18 are rejected and claims 14, 15 and 17 are objected to.

Drawings

Applicant believes that the International Application includes the proper drawings and references (see also the priority document) and that the International Bureau may have mis-numbered the drawings. Nevertheless, Applicant is submitting replacement sheets are requested and believes that no new matter has been added.

Specification

Applicant believes that the International Application includes proper references. However, Applicant has amended the specification to clearly identify the referenced patents including the inventor name and title associated therewith for DE 19545993, DE 29907113, and EP 0695915. Applicant believes that it has not included any new matter.

Claim Amendments

Claims 1, 9-13 and 15-17 have been amended. Claims 8 and 14 have been cancelled. Claim 1 has been amended to include claims 8 and 14. No new matter has been added.

Claim Rejections – 35 U.S.C. §103(a)

Applicant's Claims Are Not Rendered Obvious Under 35 U.S.C. §103 Over Any Of The Prior Art Patents

The Examiner has rejected Applicants' claims 1 through 13, 16 ad 18 under 35 U.S.C. §103. Applicant respectfully disagrees with the Examiner.

The Examiner has failed to establish a prima facie case of obviousness. When examining a patent application, the Examiner has the initial burden of factually supporting a prima facie conclusion of obviousness.[1] Additionally, when rejecting claims under 35 U.S.C.

[1] *See, In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

§103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness.[2] In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). Specifically, the Examiner must (1) determine the scope and content of the prior art; (2) determine the differences between the prior art and the claims at issue; and (3) determine the level of ordinary skill in the art.[3] In addition to these factual determinations, the Examiner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."[4] Moreover, the analysis supporting obviousness should be made explicit and should "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements" in the manner claimed.[5] It is well established that it is never appropriate to rely on conclusions of "basic knowledge or common sense" that is not based on any evidence in the record lacks substantial evidence support.[6]

Only if the Examiner makes a prima facie case of obviousness, does the burden shift to the Applicant for providing evidence of non-obviousness.[7] Obviousness is then determined based on the evidence as a whole and the persuasiveness of the arguments.[8] Here, the Applicant respectfully asserts that the Examiner has failed to meet the evidentiary burden.

Therefore, a person of ordinary skill in the art at the time of the invention would not have looked to the prior art cited by the Examiner to create Applicant's claims. As such, the Applicant respectfully requests that the Examiner reconsider Applicant's claims.

Nevertheless, Applicant has amended its claims so that the application can be allowed, but does so without prejudice to refilling the original claims for prosecution.

Thus, Applicant requests that the Examiner withdraw the objections and allow the application.

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[2] *See, In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988).
[3] *See, Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).
[4] *See, In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).
[5] *See, KSR Int'l Co. v. Teleflex*, No. 04-1350, slip op. at 15 (U.S. 4-30-2007).
[6] *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (fed. Cir. 2001).
[7] *See, In re Oetiker*, 977 F.2d at 1445.

Conclusion

Applicants respectfully requests entry of the amendments and consideration of this application.

Respectfully submitted,

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[8] *See, Id.*